

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MILO NELSON, SR.,
Plaintiff,

CASE NO. _____

-v-

HON. _____

ALEXANDER BARTON, JORDAN
BARRONS, and BRYCE KERSCHEN,
In their official and individual capacities;
CITY OF BATTLE CREEK POLICE
DEPARTMENT; and, CITY OF
BATTLE CREEK, a municipality.
Jointly and severally,
Defendants.

**COMPLAINT; and DEMAND FOR
JURY TRIAL**

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COMPLAINT

INTRODUCTION

1. This is an action for money damages brought pursuant to 42 U.S.C. §§ 1983 and 1988, and the Fourth, and Fourteenth Amendment to the Constitution, and under the Law(s) of the State of Michigan, ALEXANDER BARTON, Police Officer of the CITY OF BATTLE CREEK, JORDAN BARRONS, Police Officer of the CITY OF BATTLE CREEK POLICE DEPARTMENT, BRYCE KERSCHEN, Police Officer of the CITY OF BATTLE CREEK POLICE DEPARTMENT, in their official and individual capacities; CITY OF BATTLE CREEK POLICE DEPARTMENT; and, against the CITY OF BATTLE CREEK. Jurisdiction is based

upon 28 U.S.C. §§1331 and 1343, and on the pendent jurisdiction of this Court to entertain claims arising under state law.

2. It is alleged that the individual police officer defendants JORDAN BARRONS; BRYCE KERSCHEN; and/or, ALEXANDER BARTON, made an unreasonable search and seizure of the person of MILO NELSON, SR. violating his civil rights under the Fourth and Fourteenth Amendments to the United States Constitution.

3. It is further alleged that defendants JORDAN BARRONS; BRYCE KERSCHEN; and/or. ALEXANDER BARTON, in their official and individual capacities used excessive force upon Plaintiff.

4. It is further alleged that defendant(s) JORDAN BARRONS; BRYCE KERSCHEN; and/or, ALEXANDER BARTON failed to protect Plaintiff from the unreasonable search and seizure and excessive force used upon Plaintiff by the other Law Enforcement Officer(s).

5. It is further alleged that the aforementioned violations and torts were committed as a result of policies and customs of the CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK.

JURISDICTION AND VENUE

6. This action seeks damages pursuant to 42 U.S.C. § 1983 for injury to the Fourth Amendment rights of plaintiff. This Court has jurisdiction over plaintiff's claims pursuant to 28 U.S.C. §§ 1331 and 1343.

7. Venue is proper in the Western District of Michigan pursuant to 28 U.S.C. 1391(b) as, to the best of Plaintiff's knowledge and belief, all of defendants reside in or regularly conduct business in this district and all of the acts and omissions giving rise to this action occurred in the Western District of Michigan.

JURY TRIAL DEMAND

8. Plaintiff demands a jury trial in this action.

THE PARTIES

9. Plaintiff is a resident of City of Battle Creek, Michigan.

10. ALEXANDER BARTON was at all times relevant to this Complaint duly appointed and acting officer of the CITY OF BATTLE CREEK POLICE DEPARTMENT, acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the State of Michigan and/or the CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK.

11. JORDAN BARRONS was at all times relevant to this Complaint duly appointed and acting officer of the CITY OF BATTLE CREEK POLICE DEPARTMENT, acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the State of Michigan and/or the CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK.

12. BRYCE KERSCHEN was at all times relevant to this Complaint duly appointed and acting officer of the police department of the CITY OF BATTLE CREEK POLICE DEPARTMENT, acting under color of law, to wit, under color of the statutes, ordinances, regulations, policies, customs and usages of the State of Michigan and/ the CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK.

13. The CITY OF BATTLE CREEK is a municipality.

GENERAL FACTUAL ALLEGATIONS

14. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as if they were fully set forth here.

15. Plaintiff was at his home on June 30, 2017, when Defendant(S) BARTON; BARRONS; and KERSCHEN responded to his home.

16. That the Defendant's were there allegedly to search for Plaintiff's son who had warrant(s) for his arrest, although his name was not connected with Plaintiff's address.

17. That when Defendant(s) BARTON; BARRONS; and/or, KERSCHEN arrived they claimed that Plaintiff had warrants for his arrest, however, Plaintiff told the Defendant(s) when they arrived that they were looking for his son and that he was not there.

18. That Defendant(s) BARTON; BARRONS; and/or, KERSCHEN seized Plaintiff and threw him to the ground and placed him into handcuffs, despite being told that he had physical impairments that limited his ability to place his hands behind his back.

19. That after Plaintiff and his family members that were present repeatedly told the Defendant(s) they had the wrong person, they eventually released him.

20. That after being assaulted by Defendant(s), Plaintiff became fearful for his life so he went into his home to retrieve a weapon to protect himself. When he came back out he was Ordered to drop the weapon, which he did. After he had placed the weapon on the vehicle and the weapon was removed from his reach, Defendant(s) then struck Plaintiff with a taser twice.

COUNT I: RIGHT TO BE FREE FROM UNLAWFUL SEARCH AND SEIZURE
(42 U.S.C. § 1983 AND FOURTH AMENDMENT)

21. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as if they were fully set forth here.

22. Defendant(s) BARTON; BARRONS; and/or, KERSCHEN violated Plaintiff's Fourth Amendment rights by unreasonably seizing and detaining Plaintiff.

23. Defendant(s) BARTON; BARRONS; and/or, KERSCHEN's unlawful actions were done willfully, knowingly and with the specific intent to deprive Plaintiff of her constitutional rights.

24. As a consequence of Defendants' actions, Plaintiff is fearful and apprehensive that he will, again, be subject to similar unlawful acts by Defendant(s).

25. As a direct and proximate result of Defendants' unlawful actions, Plaintiff has suffered and continues to suffer physical pain and injury, mental pain and suffering, embarrassment, anguish, costs of counsel and other losses.

COUNT II: RIGHT TO BE FREE FROM EXCESSIVE FORCE
(42 U.S.C. § 1983 AND FOURTH AMENDMENT)

26. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as if they were fully set forth here.

27. Defendant(s) BARTON; BARRONS; and/or, KERSCHEN violated Plaintiff's Fourth Amendment rights by utilizing excessive force upon Plaintiff.

COUNT III: FAILURE TO PROTECT FROM EXCESSIVE FORCE
(42 U.S.C. § 1983 AND FOURTH AMENDMENT)

28. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as if they were fully set forth here.

29. Defendant(s) BARTON; BARRONS; and/or, KERSCHEN, failed to protect Plaintiff from Defendant(s) BARTON; BARRONS; and/or, KERSCHEN's excessive force inflicted upon Plaintiff.

COUNT IV: 42 U.S.C. § 1983 AGAINST CITY OF BATTLE CREEK

30. Plaintiff repeats and realleges the allegations set forth in the preceding paragraphs as if they were fully set forth here.

31. Prior to June 30, 2017, Defendant(s) CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK, developed and maintained policies or customs exhibiting deliberate indifference to the constitutional rights of persons in CITY OF

BATTLE CREEK, which caused the violation of Plaintiff's rights.

32. It was the policy and/or custom of the Defendant(s) CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK to hire officer's without properly screening them.

33. It was the policy and/or custom of the Defendant(s) CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK, to inadequately screen, supervise, and train its police officers, including the defendant officers, thereby failing to adequately discourage further constitutional violations on the part of its police officers. Defendant(s) CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK, inadequately and improperly investigate citizen complaints of police misconduct and/or refused to address them at all, and acts of misconduct were instead tolerated by the Defendant(s) CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK.

34. As a result of the above described policies and customs, police officers of the Defendant(s) CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK, including the Defendant officer(s), believed that their actions would not be properly monitored by supervisory officers and that misconduct would not be investigated or sanctioned, but would be tolerated.

35. The above described policies and customs demonstrated a deliberate indifference on the part of policymakers of the Defendant(s) CITY OF BATTLE CREEK POLICE DEPARTMENT and/or CITY OF BATTLE CREEK to the constitutional rights of persons within CITY OF BATTLE CREEK and were the cause of the violations of Plaintiff's rights alleged herein.

36. As a direct and proximate result of Defendants' unlawful actions, Plaintiff has suffered and continues to suffer physical pain and injury, mental pain and suffering, embarrassment,

anguish, costs of counsel and other losses.

RELIEF REQUESTED

WHEREFORE, Plaintiff asks this Court to award him actual, compensatory, punitive and exemplary damages in excess of \$1,000,000.00 and any other relief the Court finds equitable and just.

August 11, 2020

/s/ Ina R O'Briant (signed electronically)
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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

August 11, 2020

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